



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-01686
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

05/02/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant’s mitigating evidence overcomes the disqualifying evidence presented under the guidelines for financial considerations and personal conduct. Eligibility for a security clearance access is granted.

Statement of the Case

On August 19, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) to apply for a security clearance required for a position with a defense contractor. On October 12, 2021, she provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the affirmative findings required to grant a security clearance and issued to Applicant a Statement of Reasons (SOR), dated November 2, 2022, detailing security concerns raised by financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken under Department of Defense2 (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided her answer to the SOR on February 28, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 1, 2024, for a hearing on February 21, 2024. The hearing was held by Teams video teleconference as scheduled. The Government's exhibits (GE 1 through 4) were entered into evidence without objection. Applicant's exhibits (AE) A through C were admitted into evidence without objection. (Part of AE B could not be formatted to fit on the whole page of the exhibit, so the monthly payments were handwritten on the exhibit.) The record remained open until March 7, 2024 to allow Applicant to submit post-hearing exhibits. On March 7, 2024, Applicant submitted AE D (an undated personal budget), AE E (certified mail receipts of tax returns to the Internal Revenue Service (IRS) and the state tax agency), AE F (payment receipts for filing of tax returns to the IRS and the state tax agency). Department Counsel had no objection to these three exhibits, and they were entered into evidence. AE D through AE F were DOHA received the transcript on March 1, 2024. The record closed on March 7, 2024. (Tr. 90)

Rulings on Procedure

During the hearing, Department Counsel moved to amend the SOR by adding a Federal tax allegation under paragraph 1 as follows:

SOR ¶ 1.o – You failed to timely file, as required, your federal tax returns for tax years 2019, 2020, 2021, and 2022. (Tr. 69)

Applicant agreed with the amendment. (Tr. 70) The motion to amend the SOR is granted.

Findings of Fact

There are 14 Federal government student loan allegations and one Federal tax allegation listed in the SOR. Applicant admitted all allegations.

Applicant is 30 years old and single with no children. She received a high school diploma in May 2011, and a bachelor's degree in June 2017. Since September 2020, she has been employed as a material control specialist for a defense contractor. She was an account service representative from February 2018 to September 2020. From July 2014 to February 2018, she was a customer service representative and lead cashier, and also had a second job at a department store distribution center. This is her first investigation and application for a security clearance. (GE 1 at 12-20, 22, 38)

Origin of Student Loan Delinquencies

After her graduation from a university in June 2017, she knew that she had a grace period of six months before she had to start repaying her student loans. Although she was working two jobs after graduation, she could not repay the loans because she

was not earning enough money and she was providing financial help to her mother. She made no attempt to discuss payment options, i.e., deferment, income-based repayments or other options, with the lender, and concluded that since they were not contacting her, or had not garnished her wages, that everything was all right. She was not aware of when the student loans went to collections. (GE 4 at 6-7; Tr. 24, 26)

Before October 2023, Applicant never made any payments on the student loans. In her testimony, she indicated that she did not contact the lenders because she was using that money to pay more on other bills. Though she claims the first action she took to pay the lender occurred shortly after her October 2021 PSI, she took no further action after the lender indicated that the payments would be \$600 to \$700 a month. (Tr. 29) She also believed that the delinquent debt would be forgiven based on her low income or a potential forgiveness program sponsored by the Government to reduce or eliminate student loan debt. When the Government program never came to fruition, she decided to enroll and make payments in the President's Fresh Start program. She was accepted into the Fresh Start program in January 2023. (Tr. 24, 29-31, AE A; AE G)

SOR ¶ 1.a-1.n – The 14 accounts listed in the SOR, are displayed in the two Government credit reports as delinquent in 2018 and transferred for collections. (GE 2 at 2-5; GE 3 at 3-7)

In October 2023, Applicant began making monthly payments of \$322.91 for all 14 loans under the Fresh Start Program. She has made five monthly payments from October 2023 through February 2024. She credibly testified that she plans to keep making the required regular payments until the student loan debts are repaid. With the invaluable assistance from her aunt, she does not foresee this situation recurring. She has no other delinquent debts. (GE 2; GE 3; Tr. 22-23, 35-37; AE B)

Applicant was questioned about her \$41,000 purchase of a car in November 2020, a period she claimed that she was living paycheck-to-paycheck. Her answer was that her old car received considerable damage in an accident, and she needed a car. The mechanic told her that her old car would not be worth a lot after it was fixed. The dealer convinced her to get another car. Applicant also felt that she was overly pressured by her mother to purchase the \$41,000 car. When she returned to the dealer in the fall of 2023 to sell the car back to him, the dealer offered her about half of what she owed for the \$41,000 car. (GED 2 at 5; GE 3 at 10; Tr. 42-49)

SOR ¶ 1.o – During her testimony regarding filing Federal and state tax returns, Applicant became confused on taxes that she filed over the years. She relied on her mother to file Federal and state tax returns with the family tax preparer. She provided the proper paperwork, and she thought her mother turned over the paperwork to the tax preparer to file. After receiving a couple of notices from the IRS for missing tax returns for tax years 2019, 2020, 2021, and 2022, Applicant provided documentation showing that the returns were filed on February 13, 2024. (Tr. 59-67) See AE E and AE F.

Personal Conduct – Omissions from August 2021 E-QIP

Applicant explained that she talked to a couple of people with security clearances, who had not disclosed their student loans. However, their student loans were not delinquent or were not federal student loans. When questioned about whether she knew the loans were delinquent, she conceded that she knew she had not paid the loans, but she did not equate her nonpayment of the loans as translating to the loans being in collections. Based on her conversation with the other individuals, Applicant did not think she needed to disclose the Federal debt. She was not knowledgeable about the loans and did not have money to pay them. When the investigator asked her about the omitted information, she acknowledged the delinquent Federal debt. (Tr. 32-36, 37; GE 4) She provided no additional testimony on this issue.

Character Evidence

Applicant's aunt testified that Applicant has been living with her for the last six months, and for a period of time before. The aunt moved her into her home because she knew Applicant was experiencing financial problems. She supplied her views about Applicant's financial and tax problems, and her enigmatic relationship with her mother, the aunt's sister. At the outset of her testimony, she described Applicant as an honest but naïve person, who occasionally acted on poor advice from her mother and other individuals. Over the years, she provided her mother financial support when she was not in a position to help because of her own financial problems. (Tr. 73-77)

The aunt believed Applicant did not disclose her federal student loans on her August 2021 e-QIP because of poor advice from individuals who were not similarly situated. The aunt did not believe Applicant intentionally falsified the e-QIP. Rather, the omission occurred because of Applicant's naivety and her misunderstanding of the importance of financial matters. (Tr. 77-78)

According to the aunt, Applicant showed the same naivete about her taxes by turning most of responsibility for filing her tax returns over to her mother. The aunt stressed to Applicant that it is unwise to assume that a relative or associate is going to act in her best interests in financial matters. (Tr. 80)

Her aunt has aided Applicant in establishing an account with the IRS to retrieve her Federal tax transcripts. With her aunt's assistance, Applicant has successfully filed the missing Federal and state tax returns. Applicant is reviewing a book given to her by her aunt. The book explores the virtues of budgeting and learning how to bring the budget to life on an Excel spreadsheet program. (Tr. 81-85)

Applicant's current manager since July 2022, testified that as a property analyst, Applicant manages and maintains accountability over Federal government property connected to different programs. She has an excellent attendance record, and

she supports her job function in a professional manner. Because she is a fairly recent hire, the manager periodically counsels her concerning aspects of her job to improve her overall job efficiency and performance. (Tr. 87-89)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law, recognizing the complexities of human behavior. These guidelines are applied together with common sense and the general factors of the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

AG ¶ 18. Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local tax as required.

Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The two Government credit reports (GE 3 and GE 4) establish that the 14 delinquent student loans debts listed in the SOR became delinquent in 2018. Applicant knew that she had a six-month grace period after graduating from the university before she was required to start repaying the loans. Her claim that she received no notices from the lender and her wages were not garnisheed is irrelevant to her obligation to repay her delinquent loans. During her October 2021 PSI, Applicant was placed on official notice that her delinquent loans posed a security concern to the Government, when she acknowledged the loans were delinquent. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) does not apply because Applicant has demonstrated a belated willingness to satisfy the past-due loans. AG ¶ 19(f) applies because the missing Federal and state tax returns had not been filed when the SOR was issued in November 2022.

AG ¶ 20. Conditions that could mitigate security concerns include:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Financial Considerations

Applicant's lack of documented action on the student loans between June 2017 and January 2023 continues to cast residual doubt on her current reliability, trustworthiness, judgment. AG ¶ 20(a) does not apply.

Applicant merits no mitigation under AG ¶ 20(b) because the conditions leading to the difficulties were not beyond her control. She has been consistently employed since July 2014. Her inability to begin repaying the student loans because her earnings were insufficient, is a problem that she shares with most underemployed individuals in this country. Her financial problems were not caused by a medical emergency or some other unanticipated event. Her inability to repay the student loans because she was providing financial support to her mother, while a noble gesture, was a decision totally within her control. Her choice of providing financial help to her mother, when she had student loan problems to address, and of purchasing an expensive car rather than a less expensive car, precludes the application of AG ¶ 20(b).

AG ¶ 20(c) presents mitigation where an applicant has had financial counseling, and there are encouraging signs that her financial problems are being resolved or under control. Those signs are apparent through the aunt's productive financial counseling leading to Applicant's formation of a budget. Her aunt is teaching Applicant to seek assistance from appropriate individuals who have expertise in financial matters. In light of the aunt's financial counseling, Applicant is achieving control over the delinquent student loans. She has placed her student loans in a repayment plan under the Fresh Start program and has made five monthly repayments under the plan. AG ¶¶ 20(c) and 20(d) are applicable to circumstances of this case. The documentation that she has provided concerning the missing Federal and state tax returns shows complete compliance with those repayment conditions. AG ¶ 20(g) applies.

Personal Conduct

AG ¶ 15 expresses the security concerns related to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security

clearance action, or cancellation of further processing for national security eligibility:

The disqualifying and mitigating conditions relevant to the circumstances of this case are:

AG ¶ 16. Conditions that could raise security concerns and may be disqualifying include:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17. Conditions that could mitigate security concerns include:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

It is clear from the record that Applicant concealed information about her student loans from her October 2021 security clearance application. Notwithstanding the confusing nature of some of her explanations, and the poor advice she received before answering the e-QIP questions, based on all her testimonial statements concerning the falsification, I conclude that she deliberately concealed the student loan information from the October 2021 e-QIP (AG ¶ 16(a)), but she sufficiently mitigated the serious omission with her honest admission two months later in the October 2021 PSI. (AG ¶ 17(a)) By indicating in her testimony that she would not repeat this conduct in the future, and receiving ongoing financial counseling from her aunt, I am satisfied that her inappropriate behavior will not happen again. (AG ¶ 17(d))

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

In Guideline F cases, the DOHA Appeal Board has repeatedly held that to establish his case in mitigation, an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that she has a plan for debt resolution and has taken significant action to implement the plan. *See, e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006) From the record presented, Applicant has a plan in place and has furnished documented evidence in furtherance of the plan to pay the delinquent student loans agencies listed in the SOR.

To prevent the SOR-events from recurring in the future, Applicant must use her budget regularly. The budget is essential to maintaining accountability over her earnings and expenditures. If changes are made in her earnings or expenditures for any reason, she must make appropriate changes in her budget. If she is spending too much, then she should look for ways to reduce or cut back on her spending. She should rely on cash to reduce the urge to spend more than necessary. She should always have an open mind to receive extra financial help in addition to the assistance of her aunt. She should be ready to seek help from the facility security officer (FSO) or human relations officer of her employer concerning any financial issue that confronts her. After a full review of the entire record from an overall common-sense point of view, Applicant's ongoing financial problems have been mitigated.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.o:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT

Subparagraph 2.a:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, Applicant has mitigated the guidelines for financial considerations and personal conduct. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge